



February 2001

Office of Procurement

Minority, Female and Disabled Persons Program Quarterly Newsletter

Director's Comments

The Montgomery County Office of Procurement and the County Attorney's Office are in the process of conducting a Minority Disparity Study on the County's Minority, Female, and Disabled Persons program (MFD). The consultant who is conducting this study is Mason & Tillman. Before modifications to the current MFD program are made, there will be ample opportunity for public input.

Once the County Attorney's Office and the Office of Procurement have reviewed the results of the study, these results will be provided for public comments via public listings. After receiving the public comment, we will address concerns, issues, and questions by responding directly to the citizen, vendor or business group with the concern.

After all issues from the public are resolved, we will formulate new legislation. The general public will be invited to comment, at a public hearing, their views on the legislation. To participate actively in this process, it is important that you watch for calendar dates on the Procurement website under the MFD events section during the months of June and July 2001.

In the meantime, if you have questions or concerns, please call the Director of Procurement at 240-777-9900.

Read Your Contract and Comply with its Terms

When J. Roland Dashiell & Sons agreed to build an addition to the Caroline County Jail for \$3,075,383, Dashiell agreed to finish the work in 425 days. Although the contract required Dashiell to file a claim within 21 days after the occurrence of the event giving rise to the claim, Dashiell waited nearly 150 days before filing a claim seeking an increase of nearly \$1 million and 522 extra days to complete the project. Needless to say, the County rejected the claim because it was not filed within 21 days required by the contract. Predictably, Dashiell sued Caroline County.

Despite its untimely claim, Dashiell argued that it was entitled to over \$2 million in additional compensation because the County's architectural plans were faulty. Under these circumstances, Dashiell argued, it would be unjust to permit the County to profit from the County's own errors at Dashiell's expense. The case made its way through the Circuit Court and the Court of Special Appeals, with the intermediate appellate court ruling against the County.

The Court of Appeals of Maryland, however, found that the terms of the contract between Dashiell and Caroline County controlled the rights and obligations of the parties. *County Commissioners of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 MD. 83 (2000). After an exhaustive analysis of the law, the Court noted that the doctrine of unjust enrichment, upon which Dashiell relied so heavily, "does not

Joint Procurement of Electric Power To Save More Than \$2.2 Million in Costs

operate to rescue a party from the consequences of a bad bargain.” *Id. at 19* In response to Dashiell’s attempt to place the falt for the cost overruns on the County, the Court explain that “even if the County were enriched, such enrichment was not unjust because it was in strict compliance with the terms of their contract.” *Id. at 18*. Consequently, Dashiell’s failure to file its claim within 21 days, as required by the contract, may have cost it over \$2 million.

In Montgomery County, the Procurement Regulations impose two requirements on a contractor who has a claim. First, the contractor must attempt to resolve the dispute with the contract administrator. Second, the contractor must file a claim within 30 days of the event giving rise to the claim, unless the contract specifies a different time. The County’s General Terms and Conditions echo these requirements, providing that disputes must be decided under the Montgomery County Procurement Regulations.

Many County agencies have contract administrators assigned to handle the details of these contracts. In light of the Court of Appeals’ decisions, contract administrators should exercise care when claims are filed to determine whether the contractor has attempted to resolve the dispute and to indentify the date on which the contractor submitted the claim. In any case involving a contract the County Attorney’s Office immediately upon receipt of a claim to ensure compliance with the procedures for handling these claims.

During the next year and a half, Montgomery County and a group of five County and bi-County agencies and 10 municipalities will save more than \$2.2 million in electricity costs, thanks to a joint procurement of electric power. These savings, achieved through volume purchasing, come in addition to those realized by the recent electric industry deregulation in Maryland.

“We have long known in local government that joint procurements result in significant cost savings, and I am pleased that this particular contract will benefit so many agencies and municipalities,” said Montgomery County Executive Douglas M. Duncan. “I’m pleased that we’ve strengthened our purchasing power, and that we’re getting the electric power services we need at extremely competitive rates.”

The contract was awarded on October 20, 2000 to Washington Gas Energy Services, Inc. (WGES) of Herndon, Virginia, to supply electricity and related services to County and bi-County agencies and municipalities during an 18-month period.

The contract award is the culmination of a two-year joint procurement effort in which County and bi-County agencies cooperated to investigate, develop and issue a solicitation for competitive electricity supply. In working together, the agencies were able to take full advantage of changes to the electric power industry, resulting from deregulation. Pooling resources to buy a large block of electric power achieved price reductions, and ten municipal agencies have joined the procurement to benefit from the cost savings.

According to Montgomery County’s energy consultant, Mondre Energy, Inc., the savings achieved by the agencies through the competitive supply contract with WGES are considerable, especially in light of the currently tight market conditions and high wholesale

costs for electricity supply, both in the mid-Atlantic states and throughout the country.

The agencies involved in the procurement are Montgomery County government, Montgomery County Public Schools, Montgomery College, Montgomery County Housing Opportunities Commission, Washington Suburban Sanitary Commission, and the Maryland-National Capital Park and Planning Commission. The municipalities that joined in the procurement are Chevy Chase Village, Chevy Chase Village Section 5, City of Gaithersburg, City of Rockville, Rockville Housing Enterprises, City of Takoma Park, Town of Kensington, Town of Laytonsville, Town of Glen Echo and Town of Somerset.

Environmental issues were among the criteria considered during the procurement process and suppliers were pre-screened based on their ability to provide at least three percent of their electricity from clean and renewable energy sources. WGES had the most environmentally preferable fuel mix of all the companies that submitted bids.

Doug Duncan,
Press Release November 2, 2000



MFD Procurement Seminar

February 9 and May 11, 2001
Call 240-777-9915 for more information

Start Right Seminar

The first and third Wednesday of every month
Call 240-777-2041 for more information

Annual Procurement Forum

March 2, 2001

Presented by
The Montgomery County, Maryland
Office of Procurement
and
The Department of Economic
Development
and
Montgomery College

University System of Maryland
Shady Grove Center
9630 Gudelsky Drive
Rockville, MD 20850

Cost: \$25.00 per person

Continental Breakfast & Lunch Provided

Workshops will include:

Bonding Insurance
Becoming Certified
Starting a Business
Writing Proposals
Future Construction Projects

Panel discussions by

Montgomery County Government
Montgomery County Public Schools
Montgomery College
Maryland National Park and Planning Commission
Washington Suburban Sanitary Commission

For additional information please call:

~~***Nadine Butler on 240-777-9915***~~

Visit our website at www.emontgomery.org to download a registration form.

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Please send your comments
or suggestions to:

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MFD Awards From October 31, 2000 - December 31, 2000 of \$50,000.00 and over

Counseling Plus	\$131,250.00	HispanicAmerican
Counseling Plus	\$262,500.00	Hispanic American
J.R.'s Auto Body	\$91,199.97 est.	Hispanic American
Kelly Auto Body	\$91,199.97 est	Asian American
Oldest to Newest autobody	\$91,199.97 est	Female
Psychotherapeutic Resources, Inc.	\$150,000.00	Female
Prompt Business Services	\$5,970,000.00	Hispanic American
First Speedy Printing	\$1,492,500.00	Hispanic American
Mendoza, Ribas, Farinas & Assoc.	\$200,000.00	Hispanic American
Mason Tillman Associates	\$265,000.00	African American
L & J Construction, Inc	\$337,500.00 est.	African American
P & H Hauling	\$112,500.00 est.	African American